

Message Text

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21

ACTION XMB-04

INFO OCT-01 EUR-12 EA-07 ISO-00 SP-02 AID-05 EB-07 NSC-05

CIEP-01 TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00

COME-00 FRB-03 INR-07 NSAE-00 OPIC-03 LAB-04 SIL-01

AGR-05 L-03 PM-04 DODE-00 NSCE-00 SSO-00 USIE-00

INRE-00 /095 W

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FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 699

INFO ALL EC CAPITALS 1795

AMEMBASSY OTTAWA

AMEMBASSY TOKYO

C O N F I D E N T I A L EC BRUSSELS 02349

DEPT PASS TO TREASURY AND EXIMBANK

E.O. 11652: GDS

TAGS: EFIN, XT, EXIM, EEC

SUBJECT: EXPORT CREDIT UNDERSTANDING

REF: A) SECSTATE 48065, B) EC BRUSSELS 1577, C) EC BRUSSELS 1330

D) SECSTATE 56696

1. SUMMARY: COMMISSION OFFICIALS REPORT THAT DISCUSSIONS ARE UNDERWAY TO INVOLVE THE EC IN AN EXPORT CREDIT UNDERSTANDING SO AS TO AVOID A POSSIBLE LEGAL DISPUTE OVER THE EC COMPETENCE IN THIS AREA. WHILE RECOGNIZING THIS IS AN INTERNAL EC MATTER, COMMISSION OFFICIALS EXPRESS THE HOPE THAT ALL PARTICIPANTS WILL ALLOW THE EC TIME TO WORK THIS MATTER OUT BEFORE ISSUING UNILATERAL DECLARATIONS. END SUMMARY.

2. IN A GENERAL DISCUSSION OF EXPORT CREDIT DEVELOPMENTS, COMMISSION OFFICIALS HAVE TOLD US THAT BRITISH AND GERMAN
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OFFICIALS WERE DISCUSSING WITH OTHER MEMBER STATES POSSIBLE

WAYS OF INVOLVING THE EC IN THE PROPOSED EXPORT CREDIT UNDERSTANDING. THE SMALLER MEMBER STATES HAVE REVIEWED THE PROPOSED UNDERSTANDING AND ARE REPORTEDLY NOW CONSIDERING THE POSSIBILITY OF PARTICIPATING.

3. STILL TO BE RESOLVED, HOWEVER, IS THE ISSUE OF EC COMPETENCE IN THIS MATTER. FRG AND BRITISH OFFICIALS MET WITH FRENCH AUTHORITIES ON MARCH 8 TO CONSIDER POSSIBLE ARRANGEMENTS WHICH WOULD ENABLE THE EC TO BE INVOLVED. THOUGH THEY DO NOT KNOW THE RESULTS OF THE MARCH 8 DISCUSSIONS, COMMISSION OFFICIALS SAY THAT THE FOLLOWING POSSIBILITIES ARE BEING DISCUSSED: 1) A COUNCIL DECISION RECOMMENDING THAT MEMBER STATES ENTER INTO SUCH AN UNDERSTANDING; AFTER A TRANSITORY PERIOD, SUCH AS 12 MONTHS, THIS UNDERSTANDING WOULD COME UNDER EC COMPETENCE; OR 2) A COUNCIL DECISION INDICATING THAT FOR A TEMPORARY PERIOD, SUCH AS 12 MONTHS, NO EC ACTION WOULD BE TAKEN IN THIS AREA BUT SUBSEQUENTLY IT WOULD COME UNDER EC COMPETENCE. (COMMENT: NEITHER OF THESE SEEMS TO GET AROUND THE PROBLEM OF THE FRENCH NOT WANTING TO BE BOUND BY AN EC DECISION.)

4. COMMISSION OFFICIALS INDICATE THAT BOTH OF THESE PROPOSALS WOULD SATISFACTORILY MEET THEIR DESIRE TO ESTABLISH EC COMPETENCE IN EXPORT CREDIT MATTERS. BOTH WOULD INVOLVE A COUNCIL DECISION AND THEREBY CREATE AN EC FRAMEWORK FOR THE UNDERSTANDING. THE PROPOSALS WOULD ALSO ULTIMATELY GRANT THE EC FULL COMPETENCE IN THIS AREA. COMMISSION OFFICIALS CONTINUE TO MAINTAIN, HOWEVER, THAT IF THERE IS NO ARRANGEMENT WHEREBY THE EC IS INVOLVED IN THE UNDERSTANDING, THE COMMISSION INTENDS TO TAKE THE PARTICIPATING MEMBER STATES TO THE EUROPEAN COURT OF JUSTICE. THESE OFFICIALS HAVE TAKEN SOUNDINGS WITH SEVERAL KEY COMMISSIONERS ON THIS MATTER AND SAY THEY ARE CONFIDENT THE COMMISSION WILL SEEK LEGAL ACTION TO PRESERVE ITS COMPETENCE IN THIS MATTER. THEY BELIEVE THE CONSTITUTIONAL POINT IS TOO IMPORTANT NOT TO TAKE LEGAL ACTION, EVEN THOUGH THEY AGREE WITH THE INTENT AND THE TERMS, AS THEY CONFIDENTIAL

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UNDERSTAND THEM, OF THE PROPOSED UNDERSTANDING.

5. COMMISSION OFFICIALS SAY THAT THEY HAVE EXPLAINED THESE VIEWS TO ALL MEMBER STATES. THEY ARE HOPEFUL THAT A SATISFACTORY COMPROMISE WOULD COME OUT OF THE CURRENT DISCUSSIONS. THEY ALSO EXPRESSED THE HOPE THAT THIRD COUNTRY PARTICIPANTS WOULD NOT PRESS FOR A PROMPT DECISION TO ISSUE PARALLEL UNILATERAL DECLARATIONS DURING THIS PERIOD AND ASKED

THAT WE PASS THEIR VIEWS TO WASHINGTON.

6. COMMENT: THE COMMISSION FINDS ITSELF IN THE AWKWARD POSITION OF AGREEING TO THE SUBSTANCE OF THE PROPOSED UNDERSTANDING BUT DISAGREEING WITH THE FORM. NEVERTHELESS, FOR THE SAKE OF AVOIDING A PRECEDENT WHICH COULD UNDERCUT ITS AUTHORITY IN THIS AREA, THE COMMISSION SEEMS CLEARLY DETERMINED TO TAKE THIS ISSUE TO COURT IF PUSHED TO THE WALL. COMMISSION OFFICIALS CONCEDE THAT EVEN IF THE COURT FINDS PARTICIPATING MEMBER STATES IN CONTEMPT, THERE IS NOTHING TO PREVENT THEM FROM FOLLOWING THE CONDITIONS SET DOWN IN THE UNDERSTANDING. THEY BELIEVE, HOWEVER, THAT AT LEAST SOME PARTICIPANTS WOULD BE RELUCTANT TO CONTINUE TO ADHERE TO THE UNDERSTANDING IF THE COURT FOUND THEM IN CONTEMPT FOR ENTERING INTO IT. END COMMENT.

7. THIS MESSAGE WAS DRAFTED BEFORE RECEIPT OF REF D. HINTON

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